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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,850	09/24/2003	John Linder	LJB-10002/08	4393

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EXAMINER

BURNHAM, SARAH C

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/669,850

Applicant(s)

LINDER, JOHN

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

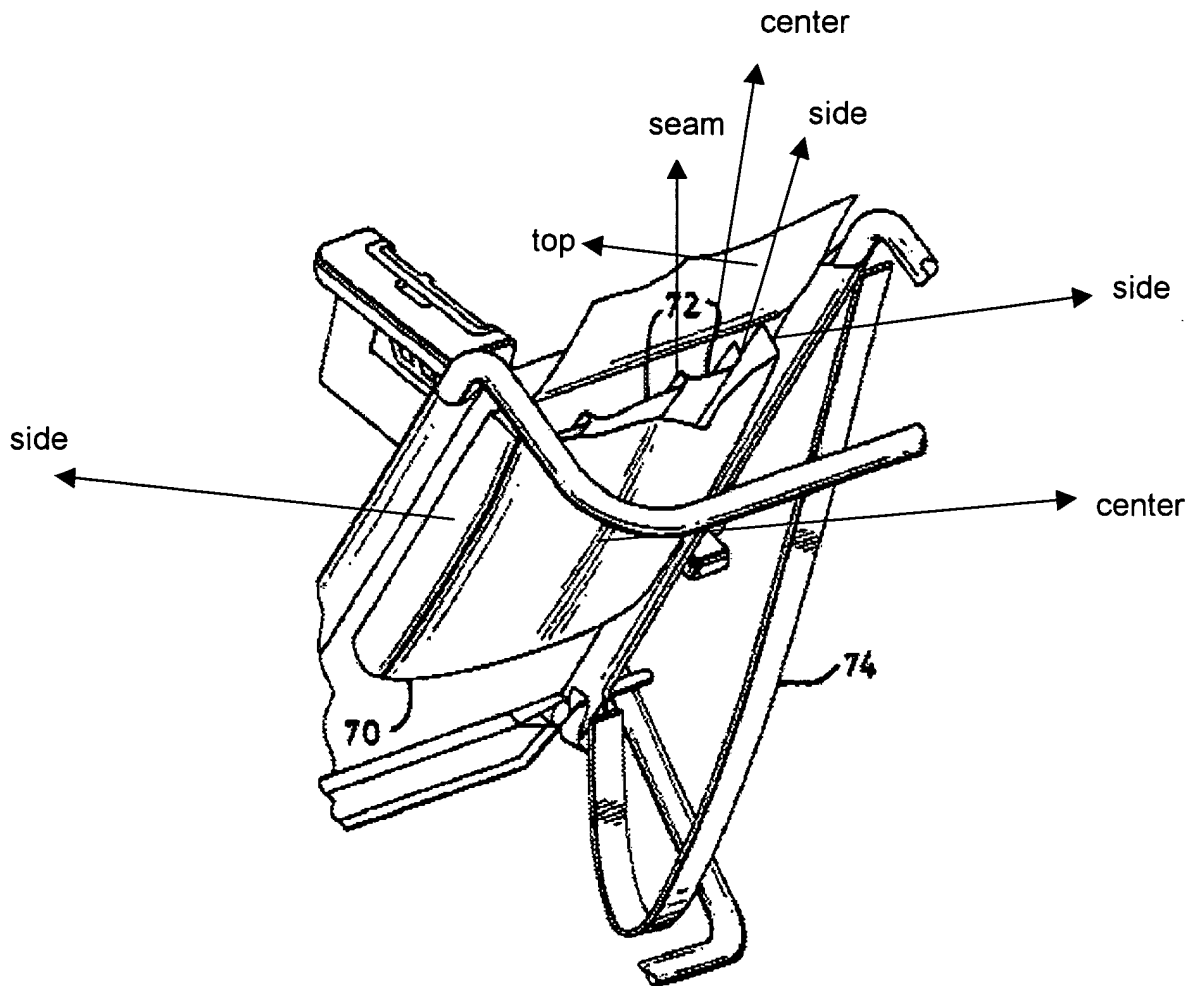
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 6 and 7-10 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being anticipated by Mellace (6,523,894) in view of White (US 2001/0027334). With respect to claims 1 and 7, Mellace discloses an apparatus (70)(72) for a chair (12) having a backrest (24) with an inner side (unlabeled) shown in Figure 1 and an outer side (unlabeled) shown in Figure 5; said apparatus comprising a pouch (70) secured to the outer side (unlabeled) of the backrest (24); said pouch (70) having a center portion (unlabeled) extending between a pair of spaced apart sides (unlabeled) and a bottom, said pair of spaced apart side, said bottom and each of said pair of sides having a portion extending outwardly from said backrest (24), said pair of sides and said center portion having a top edge defining a opening for receiving a quantity of ice into said compartment, said pocket having a drain, in the form of a mesh material as disclosed in line 25 of column 5, for emptying water melted from said ice.

With respect to claims 2 and 8, said center portion and said pair of sides are formed from a single piece of material as is best disclosed in Figure 5.

With respect to claims 4 and 10, said drain is in the form of "a mesh material so that sand and water is not trapped within" (column 5, lines 25-26).

With respect to claim 6, a top (unlabeled) extends over said opening (see Figure 5).



With respect to claims 1-3 and 7-9, the disclosure of Mellace can also be interpreted as an apparatus that comprises a pouch (72)(72)(72) having a center portion extending between spaced apart side portions. The center portion and the side portions

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are formed from a single piece of material and said pouch (720)(72) is a pair of pockets (72) wherein adjacent side portions of said pair of pockets are formed by a seam in said single piece of material.

Mellace reveals all claimed elements with the exception of a pocket formed of a watertight material.

White teaches the use a "water-impermeable material" (paragraph [0006]) for forming a pocket to receive ice and be used to cool a seat occupant by being placed on or within certain seat parts. Opening 28 functions as a drain

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the water tight material disclosed by White to make the pocket disclosed by Mellace. Such a modification would prevent the seat occupant from getting damp from the cooling material in the pocket and help prevent the growth of mildew.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mellace (6,523,894) in view of White (US 2001/0027334) and in further view of Morley (5,727,841). As disclosed above, Mellace, as modified, reveals all claimed elements with the exception of a fastening device for mounting the at least one pocket to said seat back.

Morley teaches the use of a fastening means (10) for mounting a pouch (2) on the back of a beach chair (64).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use fastening means (10) taught by Morley to attach the pouch (70) disclosed by Mellace, as modified. Such a modification would ensure that the pouch (70) could be removed from the chair (64) for proper cleaning.

### ***Response to Amendment/Arguments***

4. The RCE filed on August 8, 2005 has been considered in its entirety. Remaining issues are detailed in the section above. Applicant argued that there was no suggestion to combine the teaching of Mellace and Stanley. The Examiner has dropped to rejection in view of Mellace and Stanley and replaced it with a rejection in view of Mellace and White. The Examiner believes that there is sufficient suggestion to combine the teachings of Mellace and White. White discloses how the body-cooling pouch is applicable to seat backs. The Examiner therefore concludes that it would have been obvious to use the water tight material disclosed by White to form the pouch disclosed by Mellace.

In response to applicant's argument that Mellace is not intended to incorporate a cooling medium, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as

compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCB  
August 22, 2005

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600